



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1996

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0247

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38453.

The City of Houston (the "city") received a request for all information "relating to the fires which occurred at the Houston Distribution Warehouse during the period of June of 1995 through July of 1995." The city has made most of the responsive information available to the requestor. However, you contend that some responsive information is excepted from disclosure by chapter 552 of the Government Code. You submitted this information, Exhibits 4 and 4A, for our review. You contend that all information contained in Exhibit 4 is excepted from disclosure by section 552.103 and that the marked information in Exhibit 4A is excepted from disclosure by section 552.107.

Section 552.103(a) excepts from disclosure information relating to litigation to which the city is or may be a party. The city has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the city must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

If a governmental body receives a claim letter from an allegedly injured party and represents to this office that the letter satisfies the notice requirements of the Texas Tort Claims Act (the "TTCA"), chapter 101 of the Civil Practice and Remedies Code, then the governmental body has demonstrated that litigation is reasonably anticipated. Open Records Decision No. 638 (1996). Pursuant to the TTCA several individuals have notified the city of claims for personal injuries and property damage allegedly resulting

from the city's negligent handling of the fires. Therefore, the city reasonably anticipates litigation relating to these claims. Additionally, a city attorney representing the city's interests in matters relating to the fires has stated the city "is preparing to file an affirmative claim against Houston Distribution, Inc." The city therefore also reasonably anticipates filing a suit relating to the fires. You have shown how the information in Exhibit 4 relates to anticipated litigation. Consequently, the city may withhold all information in Exhibit 4 under section 552.103.

We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982).

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. Section 552.107(1) does not except purely factual information from disclosure, Open Records Decision Nos. 574 (1990), 559 (1990), nor does it protect information gathered by an attorney as a fact-finder, Open Records Decision No. 462 (1987). Exhibit 4A contains two memos that record communications between attorney and client. The portions of Exhibit 4A that you marked contain client confidences and the attorney's legal advice and opinion. Therefore, you may withhold the marked portions of Exhibit 4A pursuant to section 552.107.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 38453

Enclosures: Submitted documents, Open Records Decision No. 638 (1996)

cc: Mr. Omri E. Praiss
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(Open Records Decision No. 638 (1996))